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DUAL TARIFF SYSTEMS.

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The coming tariff revision which is at present claiming the undivided attention of the Ways and Means Committee, and is awaited by the business world with some degree of anxiety, has been undertaken with the object not only to adjust our rates of duty, but to bring our tariff policy in line with that of the principal foreign nations. Hence the demand for a dual tariff. Hence also the definite committment of the national platform of the Republican party, of the Speaker of the House of Representatives, and of the Chairman of the Ways and Means Committee to a maximum and minimum tariff.

But while the country seems to have made up its mind on the subject of a dual tariff, there does not seem to be as much clearness as to the kind of a dual tariff we are to have. European experience in this regard becomes a legitimate object of interest to us, since it is principally those nations that we will have to deal with in our new tariff policy. Shall we have a conventional tariff system, fashioned after the German pattern, or shall we follow the French system of a general and minimum tariff (for some reason misnamed "maximum and minimum" in this country)? In the former case Congress would have but one tariff to enact, leaving to the Executive the negotiation of reciprocity treaties by which the rates adopted by Congress would be reduced in return for reciprocal concessions by foreign countries—a procedure not unknown in American tariff history. In the latter, Congress would adopt two sets of rates, leaving to the Executive the

application of the minimum rates to those foreign countries which in his opinion offer sufficient reciprocal concessions, but leaving no discretion to the Executive as to what the minimum rates shall be. Each system has its own advantages and its success depends on conditions, economic and political, prevailing in the country adopting it.

Of the two types of dual tariffs worked out by Europe, the conventional counts among its adherents Germany, Austria-Hungary, Russia, Italy, Switzerland, Belgium, Portugal, Roumania, Servia, Bulgaria, and last but not least Japan. The maximum and minimum is today in operation in France, Spain, Greece and Norway, the latter applying the system in a modified form which will be described later.

It will thus be seen that the conventional system has a larger number of adherents among the nations of the world than the maximum and minimum. Moreover, the latter is losing ground both as regards the countries in which it is applied and as to the manner of its application. Russia, after finding herself embroiled in a tariff war owing to the rigidity of the maximum and minimum tariff, has abandoned it for the conventional system. Neither France nor Spain has been able to escape tariff wars for the same reason, and France, like Russia, was compelled to reduce her minimum tariff below the rates laid down by parliament in order to put an end to those wars. Greece has managed to steer clear of hostilities by profiting by the examples of the nations just mentioned, and conceding reductions of rates below those authorized in her minimum tariff. In other words, the fundamental principle underlying the maximum and minimum system, that of autonomous determination of the minimum rates

by the legislative body, had to be abandoned in most cases by the nations which have adopted it. Norway alone has furnished a conspicuous exception among the latter, her success being due to the fact that her minimum tariff is so low that no foreign nation could possibly find fault with it. Moreover, Norway, unlike France and Spain, does not negotiate any tariff treaties and does not ask for any special concessions other than that her goods be admitted at the lowest rates applicable to other nations. In return she uniformly applies her minimum tariff to all, reserving the maximum for countries which might discriminate against her. The case of Norway has a particular interest for us, as will appear when we come to discuss our most favored nation policy.

So much for the working of the so-called maximum and minimum tariff. Now, let us consider the conventional. The legislative body adopts a single tariff and authorizes the executive to negotiate treaties with foreign nations, by which reductions from the rates adopted by parliament are granted in return for reciprocal concessions by foreign countries. As each nation naturally tries to secure concessions on the products in which it is particularly interested, and as not all of them are equally aggressive or successful in obtaining concessions, the minimum or conventional rates granted to the various nations by one country are found to differ so much that, were each set of duties to be applied to the products of the respective nations, the country would have as many tariffs as there were treaties negotiated by it. Such complexity and confusion is prevented by the application of the most favored nation principle interpreted in the broad liberal spirit evolved by European practice.

The conclusion of a number of reciprocal treaties or conventions results, therefore, in the formation of a single

conventional tariff consisting of the lowest rates granted in any of those treaties and applied uniformly to all foreign countries entitled to favored nation treatment.

Time limitation will preclude detailed consideration of the merits of each system, which can only be summed up briefly.

Granting that the object of a dual tariff is to secure for the domestic products as high protective rates as possible within the limits laid down by the legislature, while forcing the tariff gates of the nation you negotiate with as far ajar as you can, the conventional tariff system has certain advantages which are responsible for its growing popularity among the principal nations of the world. With no minimum rates fixed in advance, there is more room for bargaining on either side and for coming to a mutually satisfactory agreement by a series of give and take steps. At the same time each side feels it has a strategic advantage in not being obliged to disclose all of its cards at the outset. But whatever weight one may attach to considerations of elasticity and strategy, which are more apparent to the diplomat than the people at large, there is a very important economic consideration which so largely accounts for the popularity of the conventional system, and that is the stability it ensures the business world. Nearly all of the German treaties have been concluded for a period of twelve years. This means that during that period the German business man is absolutely certain that he is safe from unpleasant surprises in the way of sudden tariff changes affecting either his raw materials or finished products at home or in the countries with which reciprocity treaties have been concluded. Under those conditions there is greater disposition to make large investments in plants which can yield profitable returns only over a long series of years.

Under the French system, which jealously guards the principle of autonomy in determining minimum rates and of freedom to change them at will with a view solely to national needs, the minimum rates are not as a rule fixed in the treaties beyond the possibility of change, the only guarantee given to the contracting countries being that they are to have the benefit of the minimum rates, whatever they may be. Since the enactment of the French general and minimum tariff of 1892, which is still in force, there have been no less than 348 modifications of tariff rates.¹ During the corresponding period there were practically no changes in the German tariff aside, of course, from the great tariff revision which took place in 1906. The French attach more value to their freedom to change rates at will; the Germans and most of the other European nations seem to be willing to forego this right for the stability in business conditions which the binding of rates by treaty secures to them. They also bear in mind that reserving the right to alter rates implies like privileges for other nations which if exercised by all would render nugatory all reciprocity treaties and defeat the very object for which they are concluded.

But in considering the adaptability of the system to the United States we must not lose sight of the marked constitutional differences which affect legislation here and in European countries. In Europe the executive branch of the government participates to a large extent in the work of legislation. In Germany where conventional tariff making has been worked out to a greater degree of perfection than elsewhere, there is a kind of business parliament, or semi-official body composed of the representatives of the leading industrial, commercial, and agricul-

¹ "Politique Douanière et Prosperité Industrielle", par Germain Paturel, in the fortnightly *L'Expansion Commerciale*, Nov. 16, 1908, p. 675.

tural bodies, recognized by the government and shaping the tariff from its incipient stages until it reaches parliament in the shape of a perfected bill, where it is introduced by the government itself. The rates are purposely fixed higher than is thought either necessary or desirable from the protectionist standpoint, with the view of being bargained off for reciprocal concessions from foreign countries. The cabinet ministers being at the same time the most influential members of parliament, the legislative branch in European countries has a more live appreciation of the executive service, with the result that the departments have at their disposal the services of well trained experts, practically all university graduates, men of a type that are not attracted to the same extent to departmental work in Washington. After the bill has been enacted, a commission is appointed for the negotiation of reciprocity treaties composed of the government experts, some chosen for their special knowledge of the conditions of the country with which a reciprocal treaty is to be negotiated, others for their mastery of the legal questions involved, still others for their expert knowledge of the tariffs of either country, etc. To cite an instance: in the negotiations for the commercial agreement now in force between Germany and the United States, the former was represented by ten experts from the following government departments; the commercial, political and consular divisions of the Foreign Office; the Imperial Treasury Department; the Department of Commerce in the Ministry of the Interior; the Prussian Ministries of Finance, of Commerce, and of Agriculture.

Before taking up negotiations with the representatives of a foreign power, the commission of government experts meets the semi-official commission of business men

which was mentioned before, from which it learns the views and wishes of the business community and receives its final instructions from the government, which, it must not be forgotten, consists of the leading members of the dominant party or parties in parliament. The result of such a combination is that the government has no difficulty in getting the treaty, negotiated on these lines, ratified by parliament.

In the United States this elaborate machinery is not only absent, but for constitutional and other reasons could not be built up. Furthermore, tariff revision in the United States is usually the result of public agitation which can be satisfied only in one way, namely, by the enactment of rates thought just or wise. If Congress were to adopt a single tariff on the German plan, it would have the alternative of enacting rates avowedly higher than those thought necessary by the people and thus violating its ante-election pledges, or of fixing the rates at a point from which no concessions could be made by the executive in reciprocal treaties with any chance of their being ratified by Congress. After the treaties reached Congress there would be a natural disposition to view with a jealous eye the many changes wrought by executive action in the rates since adopted. Added to these difficulties would be those of a purely constitutional character. In Europe a simple majority of votes in parliament in favor of a treaty is sufficient to ratify it. In the United States a reciprocity treaty would require in the first instance action by both branches of Congress, since only the House is vested with authority to initiate legislation affecting revenue; and in the second place would require a majority of not less than two-thirds of the votes in the Senate to be ratified. Under these con-

ditions it would be quite easy for a determined minority to defeat a reciprocity treaty. What these difficulties mean is attested by past experience. In the entire history of the German Empire, during which numerous commercial treaties have been negotiated, there is not one case on record of a rejected treaty. In the United States not a single treaty was ratified by the Congress which authorized their recognition under section 4 of the Dingley act, and other reciprocity treaties negotiated have failed of ratification.

Past experience and considerations of mere expediency seem to point, therefore, to the maximum and minimum tariff as a more practical and safer policy for this country to follow. With both the maximum and minimum rates adopted by Congress, in the first instance there would be no necessity of submitting the treaties to the House. In the Senate, too, less opposition would be likely to assert itself, for the same reason. Moreover, if the precedent established in section 3 of the McKinley and Dingley acts were to be followed in shaping our new tariff policy, it would be possible to do away with the ratification of reciprocal agreements by the Senate without the surrender on the part of Congress of its prerogative of fixing tariff rates. With the exception of Cuba, practically all the tariff benefits which the United States enjoys today in foreign countries are due to the reciprocal agreements concluded by the executive without ratification by the Senate, by virtue of the authority vested in him by section 3 of the tariff act and on the basis of reductions of duty on the extremely limited number of articles comprising wines, liquors, paintings, and statuary. Here again past experience points the way to still greater achievements when Congress will substitute a large list of minimum rates for the few sanctioned so far.

Most Favored Nation Treatment.

No consideration of the dual tariff system can be complete without a reference, at least, to the most favored nation principle. As has been pointed out, the most favored nation clause, as interpreted and applied by European nations, forms part and parcel of their conventional tariff system. Briefly stated, it implies the immediate, unconditional and gratuitous extension to all countries entitled to most favored nation treatment of every reduction in rates of duty granted by one country to another, whether by treaty, legislative enactment, or in any other manner. Today the United States stands out as a conspicuous exception among the great nations of the world in the interpretation of one of the most important principles of international law. With but few exceptions, the government of the United States has clung to the original and unique construction of the most favored nation clause in our treaties with foreign countries, under which concessions granted to one nation in return for reciprocal advantages are not extended to most favored nations except for similar returns.

The application of this principle in connection with the adoption of a comprehensive system of reciprocity, such as has never been attempted in the history of this country, would bring in its train many consequences, among which two claim present attention.

In the first place it would make our tariff system so complex that instead of a dual tariff we might have as many tariffs as there were treaties in force. If nation A obtained a reduction of duty of say 10 per cent upon silk goods, and nation B in a treaty subsequently negotiated managed, by means of concessions more valuable to us, to secure a reduction of 20 per cent of the same duty, we should in the first place have three tariffs on

silk: the general tariff adopted by Congress, the tariff applicable to nation A, and that applicable to nation B. With the same principle applied to our treaties with all other nations and all the other products which might be covered by the treaties, there would be a sufficient assortment of rates to please the taste of the most fastidious lover of variety.

The second consequence to be considered is that no foreign nation would care to negotiate a treaty whose advantages might be made nugatory or worse by greater advantages subsequently granted to a rival nation. The only way in which it could secure the additional concessions under our construction of the most favored nation principle would be by negotiating a supplemental treaty based on new concessions which it might not be able to grant after it had exhausted the list of concessions in the first treaty. The system would be fraught with possibilities of constant surprises and resultant disturbances unsettling business conditions throughout the world. The only way out of that impossible situation under the conventional tariff system would lie in the adoption of the European interpretation of the most favored nation clause.

As a matter of fact, we were obliged to make that departure in the first experience we had with the dual tariff. The unratified treaty between the United States and France negotiated by Mr. Kasson in 1899 on the basis of section 4 of the Dingley act which provides for minimum rates not to exceed 20 per cent reduction from the regular duties, stipulated that should the United States grant reductions of duty to another country below those granted to France on the articles covered by that treaty, such lower rates were to be "applied of right and without delay to the like articles" of France. The same reserva-

tion was made with regard to sparkling wines and woolen goods, neither of which was given special rates under the treaty.²

The provision of Article III just cited points the way the United States will probably enter upon should the dual tariff with the concomitant system of reciprocal treaties become the settled policy of the country. The principle, if uniformly adopted in all of our reciprocity treaties, would have the advantage of removing the one serious obstacle to broad, comprehensive reciprocity treaties with the United States from the European point of view, while securing to American products the benefits of the broad European interpretation of the most favored nation principle, which is now denied to us in some countries as a sequence of our own attitude on the subject.

There is another way of making the minimum rates uniform to all reciprocating nations, which would not require the least departure from our most favored nation policy. It is the policy of Norway alluded to in this paper, and it seems to find favor in congressional circles. Instead of making the maximum tariff the basic or general tariff from which reductions would be traded off for reciprocal concessions, the congressional idea is to make the minimum tariff generally applicable to all nations granting their minimum rates to us, and keeping the maximum tariff in reserve as a retaliatory measure for countries which make any tariff discriminations against American products. This system has all the advantages of simplicity, as it would reduce negotiations with foreign nations to a minimum and would do away with the necessity of formal treaties and the reopening of the dis-

²Art. III of the Convention between the United States and France. Senate Document No. 22, 56th Congress, 1st Session. December 6, 1899.

cussion of the troublesome and vexing most favored nation problem.

However, there are two serious objections to it. The first and important objection is from the point of view of American interests. The automatic application of the minimum rates to countries likewise applying their minimum rates to the United States, while effectively protecting American products against discrimination, would preclude the possibility of negotiation for special concessions on American products. Yet, with the skillful art of tariff making, several European nations have contrived to hit distinctly American products with high rates of duty for the very purpose of forcing concessions from this country. As no other nation but ourselves is interested in those products, there are no minimum or conventional rates in force to cover them, and none can be secured except by negotiation of reciprocity treaties looking to that end.

The second objection is from the foreign point of view, but is just as vital, since it takes two parties to make a dual tariff work successfully. It lies in the danger of our minimum rates being fixed too high to be considered as a reciprocal return by foreign nations for their own minimum tariff. In the Norwegian tariff this has not been the case, the rates being very low. Failure on the part of any of the great nations to accept our minimum tariff in return for theirs, would, under the system proposed, leave no alternative to the executive but the application of the maximum tariff with consequent tariff reprisals on either side, such as we have seen in the case of France and Spain.

The choice seems to be, therefore, in favor of a maximum and minimum tariff on the lines laid down in section 3 of the Dingley act, but with the minimum rates to cover

the greater part of the tariff instead of the few articles of wines, spirits, and paintings to which that section now applies. This section gives the executive the power to negotiate reciprocity treaties on the basis of the minimum rates authorized by Congress, without requiring the submission of the treaties to the Senate for ratification. The system combines the advantages of securing to the legislative branch complete control over the tariff rates, both maximum and minimum; insuring flexibility in leaving to the discretion of the executive the determination of what is an equivalent concession on the other side, and inspiring confidence in the foreign nations that the treaty once negotiated will be actually put into force. Finally, it has the advantage of having stood the test of practical experience, since, in spite of its circumscribed scope it has been the instrument for securing to the United States the enjoyment of minimum rates in most of the countries of Europe.